HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.35690 of 1997

Date: 29-03-2007.

Between :

G.Sudhakar Rao.

.....Petitioner

And

The Singareni Colleries Co.Ltd., Kothagudem,
rep. by its Director (Technical) & others.

.....Respondents.

HON'BLE SRI JUSTICE C.V.RAMULU

WRIT PETITION No.35690 of 1997

ORDER :

This writ petition is filed seeking a Mandamus—

(i) declaring the impugned office order No.P.10/4201/IR/2518, dated 10.12.97 issued by the First respondent as illegal, arbitrary and set aside the same;

(ii) direct the respondents not to revert petitioner from the post of Head-Overman; and

(iii) pass any such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

It appears, the petitioner was appointed in the 1st respondent-Company as a Badli-filler and got promoted as a Shot-firer in the year 1976 and subsequently promoted as Head-Overman in the year 1990. On 27.05.1997 when the petitioner was in the second shift duty as Head-Overseer, an accident occurred, wherein

one Devi Mallaiah, Shot-firer, died due to roof fall, therefore, the petitioner was charge-sheeted alleging that he had violated Regulation 43(8)(a) and 190 of Coal Mines Regulations, 1957. The petitioner submitted a detailed explanation for the same. However, having not satisfied with the said explanation, a detailed enquiry was ordered into the matter. The enquiry officer held the petitioner guilty of all the charges. On the basis of the report of the enquiry officer, a show cause notice was issued to the petitioner, proposing the punishment of reversion. The petitioner submitted his explanation and thereafter, final proceedings were passed on 10.12.1997 reverting the petitioner to the post of Overman, Grade-B from Overman, Grade-A. Aggrieved by the same, the present writ petition is filed.

The charge in brief was that on 27.05.1997 in the second shift, the petitioner was in-charge Overman of I/9 Panel. During the shift, a fatal accident occurred to one Devi Mallaiah, Shot-firer at about 7.30 p.m. due to fall of stone layer measuring 3.2m x 1.35m x 0m-0.30 mtres from the roof at No.25 Dip Slice/24LN/42Dip/4 Seam. On enquiries, it was revealed that the petitioner failed to inspect the place of accident even after half of the shift period from the commencement of the shift. It is the contention of the respondents that had the petitioner

visited the spot before the accident, probably the accident could have been avoided. On the basis of that, the petitioner was reverted from Overman Grade-A to Overman Grade-B.

The learned counsel for petitioner strenuously contended that apart from the enquiry was not being properly conducted, the punishment of reversion from Overman Grade-A to Overman Grade-B is disproportionate to that of the misconduct alleged. On mere suspicion and surmises, action was initiated against the petitioner. It is not the case of the respondents that the petitioner was responsible for the accident or somebody alerted him saying that there was going to be some accident at the spot. The allegation of the respondents, in simple, is that the petitioner lacked anticipation of the accident and had he visited the spot during the first half of the shift time, probably he could have detected that and could have avoided the accident. These are all surmises on which the petitioner was held to be guilty of the charges and reverted from the post of Overman Grade-A to Overman Grade-B, which is arbitrary and illegal.

A detailed counter-affidavit has been filed by the respondents and it is argued by the learned counsel for respondents that the Overman is supposed to distribute work among the workers and give necessary instructions

to the workers in the Mine. This is a routine matter, and that does not mean that the Overman should ignore the safety precautions. May be the distribution of work itself takes some time, but it is not true to state that only six hours would be left for the Overman to inspect all the working places. In this case, the petitioner failed to inspect the accident spot till 7.35 p.m. In such circumstances, the long experience of one competent person comes handy in apprehending and averting the danger. On account of lapses on the part of the petitioner, the death of one Devi Mallaiah had occurred. The petitioner, being in-charge of the Districts, was entirely responsible for the accident, and had he gone down the Mine in time and inspected the accident spot, he could have arranged for adequate fencing in the dangerous places and this accident could have been avoided. He failed in his duties by not inspecting the working places as per Regulation 43 (6) and 43(8)(a) of Coal Mine Regulations, 1957. As per the depillaring rules, the petitioner has to inspect the Districts twice in the allotted eight-hour shift. The petitioner failed in this regard, therefore, the Management enquired into the accident in detail and served the charge for his negligence. The enquiry was initiated as per the standing orders and all the procedure required under the Law was followed and

the petitioner was found to be guilty of the charge alleged against him. Therefore, no interference is called for by this Court under Article 226 of the Constitution of India.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned order and other material made available on record.

The whole case of respondents is that if the petitioner had inspected the accident spot prior to the accident, he could have arranged for adequate fencing in the dangerous places, but he failed in his duties by not inspecting the work place, due to which, an accident occurred, causing the death of one Devi Mallaiah. In the entire charge, it is not the case of the respondents that there were any symptoms at the spot, to foresee such an accident. It is their case that had the petitioner visited the accident spot, probably he could have avoided it. By this, the respondents wanted to say that the petitioner lacked anticipation. Even in a case of accident, unless and until there is some material to show that somebody had alerted the petitioner, or somebody had already sensed the danger and informed about it to the petitioner, but inspite of that, he had not taken any action, probably what the Management says is correct. But this is not one such

case. Here, it is the case of the respondents that had the petitioner visited the work place earlier, he could have avoided the accident. Except this, nothing is stated and no details are available. Assuming that even if such a charge is proved, which can, at the most, be said to be some dereliction of duty, imposing of a punishment of reversion from Overman Grade-A to Overman Grade-B is shockingly disproportionate to that of the misconduct. But at the time of admission of the writ petition, this Court granted interim suspension of the impugned order in W.P.M.P.No.41966 of 1997, dated 02.01.1998 and infact, the same was made absolute thereafter on 29.02.2000 on filing a vacate stay petition by the respondents. Thus, the petitioner is continuing in the post of Overman Grade-A till date and he is at the verge of retirement. In those circumstances, I deem it appropriate to give a quietus to this litigation at this stage itself, instead of remanding the matter to the respondents for considering as to awarding of alternative punishment.

Therefore, the punishment of reversion of petitioner from Overman Grade-A to Overman Grade-B is modified to that of stoppage of three increments with cumulative effect. The writ petition is allowed to the extent indicated above. No order as to costs.

C.V.RAMULU, J

29th March 2007

ajr